IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/01/2003

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN

Criminal Appeal No.23 of 1995
and Criminal Appeal Nos. 31, 32, 33 & 148 of 1995

The Assistant Director
Enforcement Directorate
Government of India
Madras 600 006. .. Appellant in all C.As.

-Vs-

Khader Sulaiman .. Respondent in
C.As.23, 31, 32, 33/95

P. Krishnasamy Respondents in
J.Sampath Kumar .. C.A.No.148/95

PRAYER: Appeal against the common order dated 7.4.1994 made in C.C. No.673, 676, 674 & 675 of 1991 and the order dated 15.6.1994 made in C.C.No.333 of 1993, on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences I, Madras, and on the file of learned Additional Chief Metropolitan Magistrate, Economic Offences II, Madras, respectively.

!For Appellant : Mr.K. Kumar, Spl.Counsel
for Enforcement Directorate

^For Respondent in C.A.Nos.
23, 31, 32 & 33 of 1995 : Mr.M.M. Abdul Razack

For Respondents in C.A.No.
148 of 1995 : Mr.P. Rajarathinam

:J U D G M E N T

1.1. C.A.Nos.23, 31, 32 and 33 of 1995 are directed against a common judgment of 8acquittal dated 7.4.1994 made in C.C.Nos.673, 676 , 674 & 675 of 1991 on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences I, Madras and C.A.No.148 of 1995 is directed against the judgment of acquittal dated 15.6.1994 made in C. C.No.333 of 1993 on the file of learned Additional Chief Metropolitan Magistrate, Economic Offences II, Madras.

1.2. Even though the facts relating to each of these cases slightly differ from each other, the issues that arise for consideration in these appeals are identical and common, and hence, these appeals were heard together.

2. The interesting and substantial questions that arise for consideration in these appeals are:

i.Whether the non-issuance of opportunity notice to the respondents/ accused as contemplated under Section 61(2)(ii) of the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as "FERA, 1973 ") vitiates the case of the prosecution?
ii.Whether the Courts below are right in acquitting the respondents/ accused, holding that the appellant/complainant has failed to prove the charges, beyond all reasonable doubts, against the respondents/ accused that they are guilty of the offences punishable under the provisions of the FERA, 1973?
iii.Are the respondents/accused not entitled for the benefit of the enactment of the Foreign Exchange Management Act, 1999 (hereinafter referred to as "FEMA,1999") whereunder no provision is made for punishment, assuming that the respondents/accused are liable to be convicted for the offences punishable under Sections 9(1)(b) and 9(1)(d) of the FERA, 1973 in the respective criminal cases, and could they be punished for the said offences under the FERA,1973, which stands repealed by the enactment of the FEMA?

3.1.1. The case of the prosecution in C.C.Nos.673, 676, 674 and 675 of 1991 is as under.

3.1.2. One Khader Sulaiman is the accused in C.C.Nos.673, 676, 674 and 675 of 1991, which were tried jointly.

3.1.3. Equipped with a search warrant dated 8.11.1985 issued under Section 37 of the FERA, 1973 by the Director of Enforcement, the Enforcement Officer P.V.Balasubramanian (P.W.1) conducted a search in Khader Sulaiman's house on 9.11.1985 at No.27, Appu Maistry Street, Madras - 1 and seized certain incriminating documents, which are marked as Ex.P3 series, as well as Indian currency of Rs.30,000/- under a mahazar report (Ex.P2), and at the time of search Khader Sulaiman gave a statement to P.W.1 and the same was marked as Ex.P4.

3.1.4. In the said statement dated 9.11.1985 (Ex.P4), the accused Khader Sulaiman had explained the code word, namely "COLD FINGER" as well as the modus operandi operated by him in dealing with the foreign exchange which are punishable under Sections 9(1)(b), 9(1)(d) and 5 6(1)(i) of the FERA,1973, and also explained about the incriminating documents, viz., seven sheets (Ex.P3 series), seized during the search on 9.11.1985.

3.1.5. Thereafter, Khader Sulaiman made the following statements, viz., (i) statement dated 11.11.1985 (Ex.P8), and (ii) statement dated 24.2.1986 (Ex.P9), wherein he confirmed his dealings in foreign exchange.

3.1.6. During the course of investigation P.W.1 obtained a statement

from one Saroja, wife of T.S. Balasubramanian, dated 4.3.19 86, (Ex. P10) wherein she had stated that her husband was working in DSA Ruwi Sultanate of Oman for the past three years and returned to India on 6 .2.1986 as he was dismissed from service on 5.2.1986 and that her husband himself would state with respect to the payment which she used to receive from him through a third party.

3.1.7. However, in Ex.P11, a telegram sent by Khader Sulaiman addressed to the Enforcement Officer, it was alleged that the statements, Exs.P4, P8 and P9, were obtained from him under force, threat and coercion; and therefore, they are not binding on him.

3.1.8. Based on the above statements of Khader Sulaiman (Exs.P4, P8 and P9), adjudication proceedings were initiated under Section 51 of the FERA, 1973 for the alleged contravention of Sections 9(1)(b) and 9(1)(d) r/w 56(1) & (2) of the FERA, 1973 a show cause notice (Ex.P5), as contemplated under Section 56 of the FERA, 1973 was served on Khader Sulaiman, to which Khader Sulaiman submitted his explanation dated 16.8.1988, (Ex.P6).

3.1.9. In Ex.P6, Khader Sulaiman stated that he had already, by his letter dated 11.11.1985 (Ex.D1) and his telegram dated 24.2.1986 (Ex.P11), retracted the statements made on 9.11.1985 (Ex.P4) and 11.11.19

85 (Ex.P8) and hence they are not binding on him. It was also contended that the onus of proving the receipts and payments, in violation to the provisions of the FERA, 1973 lays on the appellant/ complainant.

3.1.10. After giving a personal hearing to the accused Khader Sulaiman and his counsel on 16.9.1989, the adjudication authority, viz. Additional Director of Enforcement, by proceedings dated 11.10.1989 (Ex.P7), held that Khader Sulaiman had contravened the provisions of Sections 9(1)(b) and 9(1)(d) of the FERA, 1973 and imposed a penalty of Rs.65,000/- and Rs.60,000/- for the said offences respectively, in addition to the confiscation of Rs.30,000/- under Section 63 of the FERA, 1973.

3.2. In the light of the evidence of PW1 and the documentary evidence Exs.P4, P8 and P9, the appellant contended that the accused Khader Sulaiman committed the offence punishable under Section 9(1)(d) r/w 56(1)(1) for distributing Rs.1,02,700/- in July 1985 and Rs.2,79.600/- during July and September 1985; under Section 9(1)(d) r/w 56 (1)(ii) for distributing Rs.20,000/- in November 1985; under Section 9(1)(b) r/w 56(1)(i) for receiving payment of Rs.1,03,000/- in May 1985 and Rs.1,17,000/- in August 1985; and under Section 9(1)(b) r/w 56(1)(ii) for receiving payment of Rs.96,500/- in July 1985, Rs.67,000/- in August 1985, and Rs.50,000/- in October 1985, as the accused failed to prove that he had requisite permission from the Reserve Bank of India for receiving the amount from a person resident outside India and disbursing the same to the person residing in India.

3.3.1. In defence, Khader Sulaiman marked a copy of the letter dated 11.11.1985 (Ex.D1) addressed to the Special Director of the Enforcement

Directorate, complaining that he was tortured and forced by the officers of the Enforcement Directorate to give a statement (Ex.P4), and denied his complicity in the crime.

3.3.2. The accused Khader Sulaiman contended that:
(a)the learned Magistrate ought not to have taken cognizance of the offences for want of opportunity notice contemplated under Section 61 (2)(ii) of the FERA, 1973;
(b)the statements marked as Exs.P4, P8 and P9 cannot be relied upon, as the contents of the same were retracted by letter dated 11.11.1985

(Ex.D1), and by a telegram marked as Ex.P11, as well as in their respective bail applications;
(c)the non-examination of S.K.Haja Mohideen, a person resident outside India, at whose instance the amounts were said to have been received and paid to the persons in India vitiates the case of the prosecution;
(d)the non-examination of the recipients of the amount renders the case of the prosecution unbelievable and therefore, no reliance could be placed on the seven sheets (Ex.P3 series) said to have been seized from Khader Sulaiman; and
(e)the failure to examine the bankers through whom the amounts were said to have been disbursed by demand drafts renders the prosecution case untrustworthy.

4. The learned Additional Chief Metropolitan Magistrate (E.O.I), by a common judgment dated 7.4.1994, accepted the contentions of the accused-Khader Sulaiman and acquitted him of all the four charges, holding that:

(a) the statements of the accused Khader Sulaiman were obtained by force and coercion;
(b) the statement (Ex.P4) obtained from the accused Khader Sulaiman while he was under illegal custody could not be relied upon;
(c) the prosecution failed to prove the charges against the accusedKhader Sulaiman by independent witness, satisfactorily; and
(d) Ex.P3 series could not be relied upon for want of Mahazar witnesses to the same;

Hence, C.A.Nos.23, 31, 32 and 33 of 1995.

5.1.1. The Criminal Appeal No.148 of 1995 is directed against the judgment of acquittal dated 15.6.1994 in C.C.No.333 of 1993 of the learned Additional Chief Metropolitan Magistrate (E.O.II), Chennai.

5.1.2. The case of the prosecution in C.C.No.333 of 1993, in brief, is stated as follows:

5.1.3. P.Krishnasamy and J.Sampath Kumar are the first and second accused respectively in C.C.No.333 of 1993.

5.1.4. P.W.1, equipped with a search warrant (Ex.P1) dated 9.7.1991 issued under Section 37 of the FERA, 1973 by the Assistant Director of

Enforcement, conducted a search in the business premises of Krishnasamy, viz., Raja Traders at No.58, Thana Street, Purasawalkam, Madras 600 007 on 9.7.1991 and seized certain incriminating documents, viz. telephone file containing telephone bills and other documents (Ex.P3 series) and a diary (Ex.P4), under a mahazar report dated 9.7.1991 (Ex.P2). Krishnasamy gave a statement (Ex.P5) to PW1 at the time of search on 9.7.1991.

5.1.5. In Ex.P5, a confession statement dated 9.7.1991, the first accused-Krishnasamy had narrated the manner in which he was dealing in foreign exchange as per the instructions of Srinivasagam of Colombo. He had also explained that the documents seized from his residence on 9.7.1991, under Ex.P3 series, are related to the telephone bills relating to the telephone No.661577; the telephone book containing telephone numbers of the second accused-Sampath Kumar and other relatives and friends and his connection with them in the dealings of foreign exchange.

5.1.6. Thereafter, Krishnasamy appeared before P.W.1 on 10.7.1991, in response to the summon marked as Ex.P6 and again gave a statement dated 10.7.1991 (Ex.P7), in his own handwriting, wherein, the first accused-Krishnasamy confessed that he disbursed most of the money to Basheer and some to Roshan, Murugesh of Mayura Textiles and Murugesh of Nathan Avenue, Harrington Road, and gave the details relating to the said disbursement of funds.

5.1.7. On the same day, namely 10.7.1991, after identifying one Roshan of Madras, first accused-Krishnasamy gave another statement (Ex.P8), clarifying that he delivered Rs.20,000/- to one Roshan, as stated in Ex.P5.

5.1.8. P.W.1. also obtained a statement from one Perumal, who is a partner of Raja Traders, Madras, on 16.7.1991, and the same was marked as Ex.P10.

5.1.9. The second accused Sampath Kumar, appeared before P.W.1 on 29.7.1991, and gave a statement (Ex.P9), in his own handwriting, confirming that he was a partner of SRK Bankers along with his brother, sister, sister's husband-Srinivasagam, at whose instance, the amounts were received and paid through Muthuraman.

5.1.10. Simultaneously, the Enforcement Officer P.Ganesan, (P.W.2), executed the warrant dated 9.7.1991 issued under Section 37 of the FERA, 1973 by the Assistant Director of Enforcement, and conducted a search on 10.7.1991, in the place of SRK Bankers (Office cum house) at No.12B, Shastri Road, Thillai Nagar, Trichy, in the presence of two independent witnesses and one Muthuraman, Managing Partner of SRK Bankers. During the search, some incriminating documents, viz., five sheets and Rs.40,000/- were seized under mahazar report (Ex.P11). Two incriminating documents were seized from Muthuraman and they were marked as Ex.P12 series. Muthuraman gave a statement (Ex.P13) during the search on 10.7.1991, confirming his connection in the dealings of foreign exchange along with the second accused-Sampath Kumar, as per the instructions of Srinivasagam of Colombo.

5.1.11. On the direction of the Assistant Director of Enforcement (Ex.P14),

the Enforcement Officer, K.Dhandayuthapani (P.W.3), conducted a search in the house of Krishnasamy at No.6, Diwan Bahadur Shanmugam Salai, Chennai- 600010 on 9.7.1991 and one Bommamani, wife of Krishnasamy, alone was present at the time of search. During the search, some documents, 100 US dollars as travellers cheque and 24 US dollars were seized, under mahazar report (Ex.P15). The documents and US dollars seized were 12 in number, marked as Ex.P16 series. On the same day, viz., 9.7.1991, the second accused Sampath Kumar appeared before P.W.3 and gave a statement marked as Ex.P17.

5.1.12. While interrogating one Jakbar Nissar on 8.4.1991 in connection with some other case against him, the Chief Enforcement Officer, R.Chakrapani, P.W.4, seized certain documents from him which contained the telephone number of the first accused, viz. 661577, and slips containing code words, viz., THIRU MECKA. Based on the said information, the first accused-Krishnasamy was questioned on 30.7.199 1 and a statement was obtained from him, which was marked as Ex.P18, wherein the code word 'THIRU MECKA' was explained as follows:

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In Ex.P18, the first accused Krishnasamy, also explained the modus operandi adopted in receiving the amount from one Srinivasagam and disbursing the same to one Nissar.

5.2.1. On 19.7.1991, Krishnasamy and Sampath Kumar, by letters dated 19.7.1991 (Exs.P19 and P21 respectively) retracted their earlier confessional statements stating that the same were obtained by threat and coercion.

5.2.2. Based on the above statements, a show cause notice dated 21.2

.1992 (Ex.P23) was issued as to why adjudication proceedings as contemplated under Section 51 of the Act should not be held against them for the alleged contravention of Sections 9(1)(b) and 9(1)(d) r/w 56(1)(i) of FERA, 1973.

5.2.3. Pursuant to the above show cause notice (Ex.P23), the first and second accused were heard in person by the Adjudication Officer, who by an adjudication order dated 22.1.1993 (Ex.P26) held that first and second accused contravened Sections 9(1)(b) and 9(1)(d) of the FERA, 1973 imposed the following penalties, viz., the first accused Krishnaswamy should pay a fine of Rs.2,50,000/- for contravention of Section 9(1)(b) of the FERA,1973 and pay a further fine of Rs.2,50,00 0 /- for contravention of Section 9(1)(d) of the FERA, 1973 and that the second accused-J.Sampath Kumar should pay a fine of Rs.2,00,000/- for contravention of Section 9(1)(b) of the FERA,1973 and pay a further fine of Rs.2,00,000/- for contravention of Section 9(1)(d) of the FERA, 1973, apart from confiscating Indian currency of Rs.40,000.00, and releasing US dollars 124/- to first accused with a direction that the same should be surrendered to an authorized dealer in Foreign Exchange as required under Section 8(3) of the FERA,1973 within 15 days of the release and submit proof thereof to the Enforcement Officer.

5.2.4. Based on the above investigation and the evidence collected, a criminal case was lodged against the first accused and second accused in C.C.No.333 of 1993 on the file of the learned Additional Chief Metropolitan Magistrate (E.O.), wherein the first accused and second accused were tried for the following charges:

(i) That they, during the period starting from January, 1991 to July, on the directions of Srinivasakam of Ceylon, received Rs.1,15,26,000

/- in India from person who were unauthorized to deal in foreign exchange thereby committed an act contrary to Section 9(1)(b) of the FERA,1973 and punishable under Section 56(1)(i) of the above said Act;

(ii) That first accused, who was unauthorized to deal with foreign exchange, on the directions of Srinivasakam of Ceylon, delivered Rs.1 ,1 5,26,000/- to various persons in India thereby committed an act contrary to Section 9(1)(d) of the FERA, 1973 punishable under Section 56(1)(i) of the above Act;

(iii) That second accused, who was not empowered to deal with foreign exchange, on the directions of Srinivasakam of Ceylon received Rs.97 ,40,000/- from persons who are not empowered to deal with Foreign Exchange committed an act contrary to Section 9(1)(b) of the FERA, 19 73 punishable under Section 56(1)(i) of the above said Act;

(iv) That second accused, who was not empowered to deal with foreign exchange, on the directions of Srinivasakam of Ceylon delivered Rs.97

,00,000/- to various persons thereby committed an act contrary to Section 9(1)(d) of the FERA, 1973 punishable under Section 56(1)(i) of the above said Act.

5.2.5. On behalf of the accused it was contended before the learned Additional Chief Metropolitan Magistrate (E.O.), Chennai that:

a. the statements of the respondents/accused cannot be relied upon in view of

their respective retraction letters (Exs.P19 and P21);
b. non-examination of Srinivasagam as well as the persons who paid or received the amount on the instructions of Srinivasagam, vitiates the prosecution case; and
c. the appellant/complainant had not proved the charges against the accused beyond reasonable doubt.

5.2.6. The learned Additional Chief Metropolitan Magistrate, by judgment dated 15.6.1994 accepting the contentions made on behalf of the accused, held that the accused had not contravened Sections 9(1)(b) and 9(1)(d) of the FERA, 1973 and hence they are not guilty under Section 56(1)(d) of the FERA, 1973 and released the accused under Section 248(1) Crl.P.C. Hence, Criminal Appeal No.148 of 1995.

6. Mr.K.Kumar, learned counsel appearing on behalf of the appellants contends that:

(a) The statements of the accused/respondents in respective cases (Exs.P4, P8 and P9 in Crl.A.Nos.23, 31, 32, and 33 of 1995 and Exs.P5, P7, P8, and P9 in Crl.A.No. 148 of 1995) which are made to the Enforcement Officers, who are not Police Officers within the meaning of Section 24 of the Indian Evidence Act are admissible in evidence and are binding on the accused, and, moreover, the same corroborate with the evidence of the Investigating Officers and other documentary evidence that are seized at the time of search in the respective cases.

(b) If the amounts were received and disbursed of in the course of normal transactions, argued that, there would not be any necessity for any secretive description or codes used for disbursement of the amounts;

(c) The retraction letter (Ex.D1) and the retraction telegram (Ex.P11

) in Crl.A.Nos.23, 31, 32, and 33 of 1995 and the retraction letters (Exs.P19 and P21) in Crl.A.No.148 of 1995, much less the statements made in the bail application that the statements were obtained by the Enforcement Officers by

using force and coercion are liable to be rejected as untrustworthy, as the respondents/ accused did not complain anything about such force and coercion to the Magistrates, when they were produced for remand;

(d) Since the accused were arrested and produced before the Magistrates concerned within 24 hours in the respective cases, the statements made before the respective Enforcement Officers could not be said to have been obtained during the illegal custody;

(e) The non examination of the persons who either paid or received the money on the instructions of the persons resident outside India, or the bank through which the amounts were disbursed, in the respective cases, is not fatal to the case of the prosecution;

(f) Placing reliance on RAMESH CHANDRA MEHTA Vs. STATE OF WEST BENGAL reported in AIR 1970 SC 940, ISSA YACUB BICHARA Vs. STATE OF MYSORE reported in AIR 1971 MYSORE 7, and AIR 1981 KERALA 7, it was contended that the statements of the respondents/accused since corroborates with:

i. the material and documentary evidence in the respective cases;
ii. the recoveries of currency - both Indian Rupees and U.S. Dollars, as the case may be; and
iii. is supported with the evidence of the Investigation Officers in the respective case,
the accused are held to be guilty for the contraventions and are therefore, liable to be convicted for the respective charges;

(g) The notice issued for adjudication is a sufficient compliance of opportunity notice contemplated under Section 61(2)(ii) of the FERA, 1973. In this regard, reliance was placed on the following decisions: (a) JOTHIMANI NADAR A.S.O., Vs. THE DEPUTY DIRECTOR, ETC. reported in 1989 LW (Crl) 43; (b) ISMAIL Vs. ASSISTANT DIRECTOR, ENFORCEMENT, MADRAS reported in 1990 LW (Crl) 376; and (c) NEW INDIA CORPORATION Vs. GOVERNMENT OF INDIA reported in 1970 Crl.L.J.295 (DB); and

(h) Since the statement of co-accused could be relied upon as held in MORARJI GOCULDAS B&w CO. LTD. Vs. UNION OF INDIA reported in 1996 (8 3) ELT 258, the statement of the accused in C.C.No.333 of 1998 stands proved as the same corroborates with the evidence of coaccused and that of the co-partner of the second accused, viz., Sampath Kumar.

7.1. Mr.M.M.Abdul Razack, learned counsel for the respondent/accused in Crl.A.Nos.23, 31, 32, and 33 of 1995 and Mr.P.Rajarathinam, learned counsel appearing for the respondents/accused in Crl.A.No.148 of 19 95, took me through both the oral and documentary evidence on record, that are referred to above, in detail and reiterated the contentions that are raised on behalf of the respondents/ accused before the respective trial Courts.

7.2. Placing reliance on the decision in ASSISTANT COLLECTOR OF CENTRAL EXCISE, RAJAMUNDRY Vs. DUNCAN AGRO INDUSTRIES LTD., reported in 2 000 Crl.L.J. 4035, the learned counsel for the respondents/accused contend that even though the statements were made before the customs authorities, who are non-police personnel, the Court is duty bound to see whether such statements are admissible in law, satisfying the test contemplated under Section 24 of the Indian Evidence Act, and therefore, the statements made by the accused are liable to be scrutinized by the Court in the same manner as confession made by an accused person to any non-police personnel and the Court has to be satisfied in such cases, that any inculpatory statement made by the accused person to the Gazetted Officer must also pass the test prescribed in Section 24 of the Indian Evidence Act.

7.3. Both the learned counsel for the respondents contend that assuming the respondents/accused could be convicted based on the evidence on record for the respective charges, no punishment can be imposed on them in view of the repeal of the FERA, 1973 and enactment of FEMA, 1999, where there

is no provision for punishment. In this regard reliance was placed on the decision in STATE Vs. GHAN SINGH reported in 1990 SCC (Crl.) 1512 and T.BARAI Vs. HENRY AH HOE reported in AIR 198 3 SC 150.

7.4. Mr.M.Abdul Razack, learned counsel for the respondents in Crl.A.Nos.23, 31, 32, and 33 of 1995 emphatically contends that the charge framed in C.C.No.676 of 1991 is not sustainable in law as the said charge is with reference to the payments made in the month of November, 1985, with reference to which there is no evidence available on record, and on the other hand, the evidence is related to the payments said to be made in October, 1985.

8.1. In reply, Mr.K.Kumar, learned counsel for the appellant contends that assuming the charge in C.C.No.676 of 1991 is not based on material evidence, since there are sufficient evidence on record to prove that the accused has committed contravention of Section 9(1)(d) r/ w 56(1)(ii) of the FERA,1973 for the amount paid in the month of October, 1985, he cannot be acquitted for such contravention, as at the best the judgment of acquittal in C.C.No.676 of 1991 has to be set aside and the matter has to be directed to the trail Court to direct a new trial on the charges framed, in whatever manner he seems fit as provided under Section 464 (2) Cr.P.C.

8.2. Mr.K.Kumar, learned counsel for the appellant also contends that in view of the saving clause in the FEMA, 1999, namely Section 4 9(4) of the FEMA, 1999, the offence said to have been committed under the FERA, 1973 should be dealt with under the provisions of the repealed Act, namely the FERA, 1973 itself, notwithstanding the repeal, as the Supreme Court has time and again held that the offence committed under the FERA, 1973 are serious in nature.

9. I have bestowed my careful consideration to the submission of both sides.

10.1. As rightly pointed by Mr.M.Abdul Razack, learned counsel for the respondent in Crl.A.Nos.23, 31, 32, and 33 of 1995, while the charge framed in C.C.No.676 of 1991 against the respondent/accused - Khader Sulaiman for the contravention of Section 9(1)(d) of the FERA, 1973 is with reference to the disbursement/payment of Rs.20,000/-, made on the instruction of one S.K.Haja Mohideen, a person resident outside India, during the month of November, 1985, concedingly, the evidence relied upon by the prosecution to substantiate the said charge is with reference to the disbursement/payment of Rs.20,000/- made in the month of October, 1985.

10.2. On the other hand, once there is prima facie and satisfactory existence of sufficient grounds for proceeding against the accused, the Court is obliged to evaluate such material evidence instead of acquitting the accused from the very guilt itself, which may result in the failure of justice. Satisfied with the statements and material evidence on record that the respondents/accused in C.C.No.676 of 1991 , had contravened Section 9(1)(d) of the FERA, 1973 with respect to the disbursement/payment of Rs.20,000/- in the month of October, 1985 , even though at the stage of framing the charges the Court is not expected to go deep into probative value

of the materials on record, the Court is obliged to see whether there is prima facie evidence in support of the charge leveled against the accused. While framing charges, there is no need to maintain the same standard to be adopted by the Court in scrutinizing the evidence at the time of trial, but all due diligence should be taken even at the stage of framing the charge as to whether the charge framed is supported with prima facie and sufficient material evidence. Therefore, the Court should satisfy itself that the charge leveled against the accused is supported with prima facie and sufficient material evidence before issuing process to the accused and committing him for trial with respect to the charge framed. Want of such due diligence while framing the charge in C.C.No.676 of 1991, in my considered opinion, resulted in failure of justice, not only to the appellant/complainant, but also caused much delay in the administration of criminal justice.

10.3. If and when an error, omission or irregularity is apparent in the charge framed and tried, Section 464 (2) Cr.P.C. provides the Appellate Court to direct a new trial to be had upon a charge framed in whatever manner it thinks fit. Of course, Mr.M.M.Abdul Razack, learned counsel appearing for the accused in C.C.No.676 of 1991 submits that there would not be any gainful purpose in setting aside the judgment of acquittal in C.C.No.676 of 1991 and remitting the matter by exercising the power conferred under Section 464(2) Cr.P.C. due to the elapse of over 18 years from the time of the alleged occurrence.

10.4. As held by the Apex Court in STATE OF GUJARAT Vs. MOHANLAL reported in AIR 1987 SC 1321, the mere fact that considerable period has elapsed for which time-lag the prosecution was in no way responsible is no good ground for refusing to act in order to promote the interests of justice in an age when delays in the Court have become a part of life and the order of the day, because to deny the opportunity for the appellant/ complainant to remove the formal defect was to abort a case against an alleged economic offender and the ends of justice will not be satisfied if the accused in such criminal case is acquitted due to an error in framing the charge. The Community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the Community deserves equal treatment at the hands of the Court in the discharge of its judicial functions. The Community or the State is not a persona non-grata whose cause may be treated with disdain. The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest.

10.5. I am, therefore, of the considered opinion that, assuming there is an error or omission in the charge itself, or the charge is totally vague or is

not supported with any material evidence to be relied upon by the prosecution, the Court would not be justified to proceed with from that stage of the framing an erroneous charge. Bearing this in mind, and finding that the trial Court has acted with material irregularity, by exercising the powers conferred under Section 464 (2) of the Cr.P.C., I am inclined to allow the appeal, viz., Crl.A.No.3 1 of 1995, set aside the judgment of acquittal of the learned Additional Chief Metropolitan Magistrate, Economic Offences I, Madras dated 7 .4.1994 made in C.C.No.676 of 1991, remit the matter to the learned Additional Chief Metropolitan Magistrate, Economic Offences I, Madras, and direct a new trial to be had upon a charge framed in whatever manner he thinks fit, and complete the trial expeditiously and pronounce the judgment within six months from the date of receipt of copy of this order.

10.6. Criminal Appeal No.31 of 1995 is allowed with the direction indicated above.

11. The contentions raised on behalf of the appellant/ complainant and the respondents/accused in rest of the appeals, viz., Crl.A.Nos.2 3 , 32, 33 and 148 of 1995 are compartmentalized under the following three substantial questions:

i. Whether the non-issuance of opportunity notice to the respondents/accused as contemplated under Section 61(2)(ii) of the FERA, 1973 vitiates the case of the prosecution?
ii. Whether the Courts below are right in acquitting the respondents/ accused, holding that the appellant/ complainant has failed to prove the charges, beyond all reasonable doubts, against the respondents/ accused that they are guilty of the offences punishable under the provisions of the FERA, 1973?
iii. Are the respondents/accused not entitled for the benefit of the enactment of the FEMA, 1999 whereunder no provision is made for punishment, assuming that the respondents/accused are liable to be convicted for the offences punishable under Sections 9(1)(b) and 9(1)(d) of the FERA, 1973 in the respective criminal cases, and could they be punished for the said offences under the FERA,1973, which stands repealed by the enactment of the FEMA,1999?

12.1. Question No.(i): Whether the non-issuance of opportunity notice to the respondents/accused as contemplated under Section 61(2)(ii) of the FERA, 1973 vitiates the case of the prosecution?

12.2. In order to appreciate the scope and spirit of the opportunity notice contemplated under proviso to Section 61(2)(ii) of the FERA, 1

973, I am obliged to refer the corresponding provisions to Section 61

and 51 of the FERA, 1973 to that of the FERA, 1947, namely Sections 23(1) and 23-D respectively. The corresponding Sections, namely Section 61 the FERA, 1973 and relevant portion of Section 23 of the FERA, 1947 read as follows:

"Section 61 of the FERA, 1973 - Cognizance of offences:

(1) Notwithstanding anything contained Section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for any Metropolitan Magistrate and for any Magistrate of the first class to pass a sentence of imprisonment for a term exceeding three years or of find exceeding five thousand rupees on any person convicted of an offence punishable under Section 56.

(2) No court shall take cognizance-
(i) of any offence punishable under sub-section (2) of Section 44 or sub-section (1) of Section 58,-
(a) where the offence is alleged to have been committed by an officer of Enforcement not lower in rank than an Assistant Director of Enforcement, except with the previous sanction of the Central Government;
(b) where the offence is alleged to have been committed by an officer of Enforcement lower in rank than an Assistant Director of Enforcement, except with the previous sanction of the Director of Enforcement; or

(ii)of any offence punishable under Section 56 or Section 57, except upon complaint in writing made by-
(a) the Director of Enforcement; or
(b) any officer authorized in writing in this behalf by the Director of Enforcement or the Central Government; or
Foreign Exchange Regulation Act any officer of the Reserve Bank authorized by the Reserve Bank by a general or special order:

Provided that where any such offence is the contravention of any of the provisions of this Act or of any rule, direction or order made thereunder which prohibits the doing of an act without permission, no such complaint shall be made unless the person accused of the offence has been given an opportunity of showing that he had such permission."

Relevant portion of Section 23 of the FERA, 1947:
"Section: 23(1) If any person contravenes the provisions of Section 4

, Section 5, Section 9, Section 10, sub-section (2) of Section 12 or Section 17, Section 18-A or Section 18-B or of any rule, direction or order, made thereunder, he shall-
(a) be liable to such penalty not exceeding three times the value of the foreign exchange in respect of which the contravention has taken place, or five thousand rupees, whichever is more, as may be adjudged by the Director of Enforcement in the manner hereinafter provided, or
(b) upon conviction by a court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

xxxxx

Section 23(3) No Court shall take cognisance-
(a) of any offence punishable under sub-section (1) except upon complaint

in writing made by the Director of Enforcement,
xxxxx
Provided that where any such offence in the contravention of any of the provisions of this Act or any rule, direction or order made thereunder which prohibits the doing of an act without permission, no such complaint shall be made unless the person accused of the offence has been given an opportunity of showing that he had such permission."

12.3. Similarly, the corresponding Sections, namely Section 51 the FERA, 1973 and Section 23-D of the FERA, 1947 read as follows:

"Section 51 of the FERA, 1973 - Power to adjudicate:
For the purpose of adjudging under Section 50 whether any person has committed a contravention of any of the provisions of this Act (other than those referred to in that section) or any rule, direction or order made thereunder, the adjudicating officer shall hold an inquiry in the prescribed manner after giving that person a reasonable opportunity for making a representation in the manner and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty as he thinks fit in accordance with the provisions of that section."

Section 23-D of the FERA, 1947 - Power to adjudicate:
"(1) For the purpose of adjudging under clause (a) of sub-section (1) of Section 23 whether any person has committed a contravention, the Director of Enforcement shall hold an inquiry in the prescribed manner after giving that person a reasonable opportunity of being heard and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty as he thinks fit in accordance with the provisions of the said Section 23:

Provided that if, at any stage of the inquiry, the Director of Enforcement is of opinion that having regard to the circumstances of the case, the penalty which he is empowered to impose would not be adequate, he shall, instead of imposing any penalty himself, make a complaint in writing to the Court."

12.4. The Apex Court, speaking about the features of foreign exchange, the subject matter of the above legislations, in SHANTI PRASAD JAIN Vs. DIRECTOR OF ENFORCEMENT reported in AIR 1962 SC 1764 held that:

"... the subject matter of the legislation, viz., foreign exchange, has features and problems peculiarly its own, and that it forms a class in itself. A law which prescribes a special procedure for investigation of breaches of foreign exchange regulations will therefore be not hit by Article 14 as it is based on a classification which has a just and reasonable relation to the object of the legislation. The vires of Section 23(1)(a) is accordingly not open to attack on the ground that it is governed by a procedure different from that prescribed by the Code of Criminal Procedure.

xxxx

Section 23-D confers authority on the very officer who has power to try and

dispose of a case to send it on for trial to a court, and that too only when he considers that a more severe punishment than what he is authorised to impose, should be awarded. In a judicial system in which there is a hierarchy of Courts or Tribunals, presided over by Magistrates or officers belonging to different classes, and there is a devolution of powers among them graded according to their class, a provision such as Section 23-D is necessary for proper administration of justice. While on the one hand a serious offence

should not go without being adequately punished by reason of cognizance thereof having been taken by an inferior authority, the accused should on the other hand have in such cases the benefit of a trial by a superior court.

xxx
In our view the power conferred on the Director of Enforcement under Section 23-D to transfer cases to a Court is not unguided or arbitrary, and does not offend Article 14 and Section 23(l)(a) cannot be assailed as unconstitutional."
(emphasis supplied)

12.5. A Division Bench of the MYSORE HIGH COURT in NEW INDIA CORPN. Vs. GOVT. OF INDIA reported in 1970 Cri.L.J. 295, following the ratio laid down in SHANTI PRASAD case, referred supra, interpreted the scope of opportunity notice contemplated under proviso to Section 23(3) of the FERA, 1947 as follows:
"... The fact that the proviso to Section 23(3) provides for a further safeguard before a complaint is made does not mean that the said safeguard dispenses with the safeguard of an initial adjudication provided under Section 23-D(1). Indeed, the opportunity contemplated by the proviso to Section 23(3) need not necessarily be afforded by means of the issue of a notice, but can also be afforded in the course of an adjudication under Section 23-D(1)."

12.6. Concedingly, proviso to Section 23(3) of the FERA, 1947 corresponds to proviso to Section 61(2)(ii) of the FERA, 1973. Therefore, the ratio laid down by the MYSORE HIGH COURT in NEW INDIA CORPN. Vs. GOVT. OF INDIA, referred supra, squarely applies to decide whether opportunity notice contemplated under Section 61(2)(ii) of the FERA, 197 3 is mandatory or obligatory.

12.7. When an identical issue came for consideration before this Court in JOTHIMANI NADAR, A.S.G. Vs. THE DEPUTY DIRECTOR, ETC. reported in 1989 L.W. (Crl.) 43, S.NATARAJAN,J., as he then was, following the decision in NEW INDIA CORPN. case, referred supra, held as follows:
"... I do not think it necessary to go into the question whether the direction contained in the proviso for a show cause notice being given is mandatory in character or directory in nature. Even if it to be held that the proviso contains a mandate, the question for consideration is whether a second show cause notice should be given to a person before a criminal prosecution is launched against him under Section 56 of the Act. I find no basis in the proviso for holding that such a notice should be given. All that the proviso states is that before a court takes cognizance of an offence which relates to

the contravention of any provision of the Act, which prohibits the doing of an act without permission, the complainant must have given an opportunity to the accused to show cause that he had such a permission. What follows from this is that at some point of time prior to the filing of the complaint, the accused must have been given opportunity to show cause that he had obtained the requisite permission and he had not contravened the provisions of the Act on any manner. It is, however not necessary that the show cause notice must have been issued immediately before the filing of the complaint. If a show cause notice had been issued before adjudication proceedings were started, it would undoubtedly constitute a valid notice under the proviso to Section 61 (2). I have already held that a criminal prosecution is not a contravention of the adjudication proceedings. As such a prosecution cannot amount to a second stage of the proceeding warranting the issue of a second show cause notice. It has been held in New India Corporation Vs. Government of India, 1970 Cr.L.J. 295 that Section 23(1) of the Foreign Exchange Regulation Act, 1947 does not provide for two procedures and the opportunity contemplated by the proviso to Section 23(3) corresponding to proviso to Section 61(2) of the new Act can also be afforded in the course of an adjudication under Section 23-D(i). The ratio would govern the facts of this case also, even though the present prosecution has been launched under the 1973 Act, because the proviso under the old Act of 1947 and that under the 1973 Act are identical in terms. Hence, it is not open to the petitioner to contend that he ought to have been issued a second show cause notice before the launching of the prosecution and in the absence of such a notice the complaint is not maintainable."

12.8. Similarly, ARUNACHALAM,J., in ISMAIL Vs. ASSISTANT DIRECTOR, ENFORCEMENT, MADRAS reported in 1990 LW (Crl.) 376, on an identical question whether the opportunity notice contemplated under proviso to Section 61(2)(ii) is mandatory of obligatory, following the decisions in (i) NEW INDIA CORPN. case; and (ii) JOTHIMANI NADAR, A.S.G. case, referred supra, held that: "... The learned counsel for the petitioner would contend that Natarajan,J., had not considered in the said decision, the words " the person accused of the offence" found in the proviso to Section 61(2)(ii) of the Act, which words, in the view of the Supreme Court, can arise only when a complaint is made, relating to the commission of an offence, before a Magistrate. A formal accusation can only be deemed to be made when a complaint is made before the Magistrate, competent to try the person guilty of the infraction under various section of the Act. In reply to this specific issue, the learned counsel for the respondent would urge, that the Supreme Court was considering the scope of a statement made under Section 107 and 108 of the Customs Act, by a person against whom an enquiry was made, vis-a-vis the provisions of Article 20(3) of the Constitution of India and also with reference to Sections 24 and 25 of the Indian Evidence Act, to hold that at that stage any statement made by a person against whom an enquiry was made, was not a statement made by a person accused of an offence. He would further add that adjudication proceedings were quasi-criminal in nature and while show cause notices were issued, there was already an accusation by the Deputy Director of Enforcement against the petitioner. The words "the person accused of an offence" in the proviso, will have to be read, keeping in view the context in which it had been used and the effect of the words in the same proviso has been given an opportunity of showing".

10. In the Repealed 1947 Act, Section 23-D(1) contemplated an initial adjudication and a prosecution only in the event of the Director of Enforcement arriving at an opinion that having regard to the circumstances of the case, the penalty which he was empowered to impose would not be adequate, when instead of imposing any penalty himself, he shall made a complaint in writing to the Court.

11. Under the Foreign Exchange Regulation Act, 1973, adjudication as well as prosecution, can ever be initiated simultaneously. This is very clear from the provisions engrafted in Section 50, 51 and 56 of the Act. Hence, when a prosecution is possible even before adjudication, the provisions contained in the Proviso to Section 61(2)(ii) of the Act will have to be interpreted, in that context. Looked from that angle, it is apparent that before a prosecution is launched, the person accused of an offence must be given an opportunity of showing cause that he had such permission when the Act prohibits doing of an act without such permission. The proviso, to my mind, does not contemplate a second opportunity being furnished to the person accused of an offence, who had such an opportunity, when show cause notices were issued in cases where the adjudication had proceeding the prosecution.

12. The law laid down by the Supreme court in L.I.C. Of India Vs. Escorts Ltd., reported in AIR 1986 SC 1370, that action under Sections 5 0 or 56 was not obligatory and in the case of a prosecution under Section 56, the delinquent was further protected by the requirement that the complaint has to be made by one or other of the officers specified by Section 61(2)(ii) only and even then only after giving an opportunity to the person accused of the offence of showing that he had the necessary permission does not appear to contemplate a second opportunity before prosecution. In that case the Supreme Court was concerned with Section 29 of the Act which dealt with contravention without the general or special permission of the Reserve Bank of India. The Apex Court did not see a true foundation for the argument that the word "permission" in Section 29 of the Act contemplated previous permission only. In that context it was observed that the person accused of the offence could satisfy the office concerned that he had applied for permission and that there was reasonable prospect of his obtaining the permission when called upon to show that he had the necessary permission. In these cases we are concerned with Section 8(1) and (2) and Section 9(1)(d) of the Act. Both Sections 8(1) and (2) specifically refer to the previous general or special permission of the Reserve Bank of India under Section 29 of the Act which uses the word " permission". In the former case only the person accused of an offence, must have been given an opportunity, for showing cause that he had such permission.

13. It is, therefore, apparent that if a prosecution is initiated even before the adjudication proceedings, the person accused of an offence must have had an opportunity of showing cause that he had permission. However, if the adjudication proceedings had been initiated earlier in which show cause notice had been given, especially with reference to Section 8(1) and (2) of the Act, a second opportunity does not appear to be intendment of the proviso. All that the proviso contemplates is that before a prosecution is instituted, the person accused of an offence should have been given an opportunity. The words "had been" used in the Section also gives an insight to the object behind the

provision. In my view, the words "has been given" denote the furnishing of an opportunity to the person accused of an offence, but does not contemplate issue of a second show cause notice before the launching of the prosecution. Therefore, the decision of the Supreme Court in Ramesh Chandra Vs. State of West Bengal reported in AIR 1970

SC 940 holding that under the Customs Act, 1962, a formal accusation can only be deemed to be made when a complaint is made before a Magistrate competent to try the person guilty of the infraction under the provisions of the Customs Act does not affect the interpretation of the proviso to Section 61(2)(ii) of the Act, given above. The context in which the words have been used as well as the usage of the words "has been" must be given the full meaning in the background of the object of the Act and the importance of this provision for efficacious implementation of the general scheme of the notice before the prosecution is initiated. To hold that second action is imperative in all cases irrespective of the prosecution being earlier or later to adjudication, even after proof of a show cause notice having been given before an adjudication would certainly frustrate the purpose behind the provision.

14. The observation of Natarajan,J., in Crl.M.P.No.2288 of 1980 with which I agree are extracted here under:-
"Even if it is to be held that the proviso contains a mandate, the questions for consideration is whether a second show cause notice should be given to a person before a criminal prosecution is launched against him under Section 56 of the Act. I find no basis in the proviso for holding that such a notice should be given. All that the proviso states is that before a Court takes cognizance of an offence which relates to the contravention of any provision of the Act which prohibits the doing of an act without permission, complainant must have been given an opportunity to the accused to show cause that he has such permission. What follows from this is that at same point of time prior to the filing of the complaint the accused must have been given an opportunity to show that he had obtained the requisite permission and he had not contravened the provisions of the Act in any manner. It is, however, not necessary that the show cause notice must have been issued immediately before the filing of the complaint. If a show cause notice had been issued before adjudication proceedings were started, it would undoubtedly constitute a valid notice under the proviso to Section 61(2)"

Further in New India Corporation Vs. Director Enforcement Directorate, Government of India, reported in 1970 Cri.L.J. 295, a Division Bench of Mysore High Court while considering a similar provision in the repealed Foreign Exchange Regulation Act, 1947 observed:-
"Indeed, the opportunity contemplated by the proviso to Section 23(3) need not necessarily be afforded by means of the issue of a notice, but can also be afforded in the course of an adjudication under Section 23-D(1)."

15. Under the old Act the Director of Enforcement was empowered to make a complaint only if he considered that his own powers of punishment were inadequate to meet the situation or the gravity of the offence, while the first step of instituting adjudication proceedings had already been taken. I am in respectful agreement with the view expressed by the Mysore High Court,

which found favour with Natarajan,J. while deciding Crl.M.P.No.2288 of 1980.

16. The decisions in P.Joseph John Vs. The State of Travancore, Cochin reported in AIR 1955 SC 160 and Chintapalli Agency of Taulk Arrack Sales Co-operative Society Ltd., Vs. Secretary (Food and Agriculture) Government of Andhra Pradesh reported in Air 1977 SC 2313, can have no bearing to the issue involved in these petitions. In the earlier case the Supreme Court held that under Article 311 of the Constitution a civil servant was entitled to have a reasonable opportunity to defend himself and show cause, both at the time of enquiry into the charges brought against him and at the stage when definite conclusions have been come to, on the charges and the actual punishment to follow was provisionally determined upon. In the latter case it was held that the minimum requirement under Section 77(2) of the Andhra Pradesh Cooperative Societies Act, 1964, which was a mandatory provision was a notice informing the opponent about the application and affording him an opportunity to make his representation against whatever had been alleged in the petition. The principles of natural justice were also considered. The provisions of the Section will have to be interpreted, taking note of the context and the principles of natural justice that a person shall not be condemned unheard (Audi alteram partem). The expression "a person accused of any offence" was considered by the Supreme Court in Ramesh Chandra Metha's case reported in AIR 1970 SC 940 in the context of Article 26(3) of the Constitution taken in conjunction with Sections 24 and 225 of the Indian Evidence Act at the stage of enquiry contemplated under Sections 107 and 108 of the Customs Act.

17. In the Deputy Director, Enforcement Directorate, Madras Vs.P. Manapper Mohamed Ali Jinnah and other reported in 1989 L.W. (Crl.) 33 7, Ratravel Pandian., O.C.J., as he then was, speaking on behalf of the Division Bench held following the law laid down in State of U.P. Vs.Dgoman reported in AIR 1960 SC 1125 that the expression "accused person" in Section 24 of the Evidence Act and the expression "a person accused of any offence" in Section 25 of the said Act have the same connotation and describe the person against whom evidence is sought to be led in a criminal proceeding. Hence, all that the proviso to Section 61(2)(ii) requires is that no such complaint shall be made unless the person accused of the offence 'has been given' an opportunity of showing cause that he had such permission. On fact the petitioner has sufficient opportunity to show cause and there is no violation of the provisions of the Proviso aforementioned. Therefore, the first contention is rejected."

12.9. In view of the above settled law and admitted fact that the respondents/accused had been given an opportunity by the Enforcement authority, of being heard during the adjudication contemplated under Section 51 of the Act, non-issuance of the opportunity notice as contemplated under the proviso to Section 61(2)(ii) of the FERA,1973 shall not vitiate the case of the prosecution

12.10. Question No.(i) is answered accordingly.

13.1. Question No.(ii): Whether the Courts below are right in acquitting the respondents/ accused, holding that the appellant/ complainant

has failed to prove the charges, beyond all reasonable doubts, against the respondents/ accused that they are guilty of the offences punishable under the provisions of the FERA, 1973?

13.2.1. For analysing the rival contentions of the learned counsel on either side with respect to the above point, it would be appropriate to refer various provisions of FERA, 1973.

13.2.2. The FERA, 1973, was enacted to consolidate and amend the law regulating certain payments, dealings in foreign exchange and securities, transactions indirectly affecting foreign exchange and the import and export of currency for the conservation of the foreign exchange resources of the country and the proper utilization thereof in the interests of the economic development of the country.

13.2.3. Under the scheme of the FERA, 1973, certain special restrictions were introduced with regard to the dealings in the foreign exchange, the object being to see that the country's foreign exchange resources were not wasted under any circumstances and were properly utilized to advance the national interest.

13.2.4. Sections 8 and 9 of the FERA, 1973, contemplate a special or general permission of the Reserve Bank of India in dealing in foreign exchange. In this regard, it is relevant to refer Sections 9 (1)(b) and 9(1)(d) of the FERA:

"Section: 9 - Restrictions on payments:
(1) Save as may be provided in and in accordance with any general or special exemption from the provisions of this sub-section which may be granted conditionally or unconditionally by the Reserve Bank, no person in or resident in India shall:
(a) .....
(b) receive, otherwise than through an authorized dealer, any payment by order or on behalf of any person resident outside India.
Explanation - For the purposes of this clause, where any person in, or resident in, India, receives any payment by order or on behalf of any person resident outside India through any other person (including an authorized dealer) without a corresponding inward remittance from any place outside Indian then such person shall be deemed to have received such payment otherwise than through an authorized dealer;
(c) .....
(d) make any payment to, or for the credit of, any person by order or on behalf of any person resident outside India;
(e) to (g) ....."

13.2.5. It is a settled law that, if a person residing in India is instructed by a person resident outside India to make payment to any person in India, the person who receives the amount would be violating Section 9(1)(b) of the FERA, 1973, vide S.PARAMESWARAN Vs. DIRECTOR OF ENFORCEMENT reported

in 1993 (66) TAMAN 534.

13.2.6. Sections 34, 35, 36, 37, 38, 39, and 40 of the FERA, 1973, empower the Officers of the Enforcement, authorized by the Central Government, to search suspected persons and seize documents; to arrest such persons who are guilty of the offence punishable under the FERA, 1973; to stop and search conveyances; to search the premises; to seize documents and to examine the persons and to summon the persons to give evidence and produce documents, etc.

13.2.7. Section 51 of the FERA, 1973, provides for adjudication into the alleged contravention of the provisions of the FERA said to have been committed by such persons and to impose such penalty in accordance with the provisions of the FERA, against which an appeal is provided to the Appellate Authority under Section 52 of the FERA, 197 3, and a further appeal to the High Court is provided under Section 54 of the FERA, 1973. Section 53 of the FERA, 1973, prescribes the powers of the adjudicating officer and the Appellate Authority.

13.2.8. Section 56 of the FERA, 1973, in addition to the award of penalty by the Adjudication Officer, declares the contravention of any of the provisions of the Act, other than the one specified therein, an offence for which a person who contravenes such provisions shall be convicted and punished. Even though Section 56 prescribes a minimum punishment of 6 months imprisonment, the Court is also empowered to impose a sentence less than 6 months for adequate and special reasons.

13.2.9. Under Section 59 of the FERA, 1973, the Court shall presume the existence of culpable mental state on the part of the accused and it shall be the burden for the accused to prove the fact that he had such mental state with respect to the act charges as an offence in the prosecution. Section 59 of the FERA, 1973, referred to above makes it clear that no mens rea, viz. culpable mental state has been prescribed for such contravention. In other words, the existence of mens rea shall be presumed by the Court, as per Section 59 of the FERA, 1 973. It is rather clear that the presumption arising under Section 5

9 of the FERA, 1973, may be rebutted by the accused, but the burden that is cast upon the accused to rebut such presumption is quite heavy, because the accused has to prove the absence of culpable mental state beyond reasonable doubt in the same way as is cast upon the prosecution in an ordinary criminal trial. Section 59(3) of the FERA, 1973 , further makes it clear that such a burden to prove the absence of culpable mental state beyond reasonable doubt lying on the accused is also applicable to the adjudication proceedings initiated under Section 51 of the FERA, 1973, as applicable in relation to any prosecution for an offence under the Act. The above view is supported by a decision of this Court in the ASSISTANT DIRECTOR, THE ENFORCEMENT DIRECTORATE, MADRAS 6, Vs. N.P.V. RAMASAMY UDAYAR reported in 1997 (1) LW (Crl.) 103.

13.2.10. Section 61 of the FERA, 1973, prescribes the procedure to be followed by the Metropolitan Magistrate and for any Magistrate of the first class before passing an order of conviction and sentence punishable under

Section 56 of the FERA, 1973. As per proviso to Section 61(2)(ii) of the FERA, 1973, no complaint shall be made for the offence under Section 56 of the FERA, 1973, for contravening any of the provisions of the Act, Rules, Directions or Order which prohibits the doing of an act without permission, unless the person accused of the offence has been given an opportunity of showing that he had such permission.

13.2.11. As per Section 71 of the FERA, 1973, where any person is prosecuted or proceeded against for contravening any of the provisions of the FERA, 1973, which prohibits him from doing an act without permission, the burden of proving that he had the requisite permission shall be on him. A reference to Section 71 of the FERA, 1973, referred to above further makes it clear that the burden of proof has been shifted to the offender, though ordinarily the burden of proof in criminal cases, where the prosecution charges a person for contravention of any of the provisions of the statute which prescribes him from doing an act without such permission, lies upon the prosecution to prove that the offender had committed such offence.

13.2.12. A cursory perusal of the above provisions of FERA, 1973, reveals that no person or resident in India shall place any sum to the credit of any person resident outside India, except in accordance with any general or special exemptions, which may be granted conditionally or unconditionally by the Reserve Bank of India.

13.3.1. Placing strong reliance on the above provisions of FERA, 197

3, viz. Sections 8, 9, 59 and 71 of FERA, 1973, Mr.Kumar, learned counsel appearing for the appellant, assails the judgments of acquittal, acquitting the respondents herein, on the ground that the Courts below erred in holding that the respondents/accused had not contravened Sections 9(1)(b) and 9(1)(d) of the FERA, 1973, and they were not guilty under Section 56(1)(d) of the FERA, 1973; and in shifting the burden on the appellant/ prosecution, instead of holding that the respondents/accused failed to discharge their burden contemplated under Sections 59 and 71 of the FERA, 1973, referred to above, particularly in the context of the statements of the respondents/accused in respective cases (Exs.P4, P8 and P9 in Crl.A.Nos.23, 31, 32, and 33 of 1995 and Exs.P5, P7, P8, and P9 in Crl.A.No.148 of 1995).

13.3.2. It is settled law that the statements recorded by the enforcement officers, viz. the appellant herein, under the FERA, 1973 , either during investigation or during adjudication proceedings are not that of an accused within the meaning of Section 24 of the Indian Evidence Act, as the enforcement officer under the FERA, 1973, is not a police officer, an authority within the meaning of Section 24 of the Indian Evidence Act.

13.3.3. When a confessional statement is recorded by reason of statutory compulsion or given voluntarily by the respondents/accused, pursuant to their appearance against summons during the adjudication proceedings, the same cannot be said to have been obtained by force, threat, inducement or

promise and therefore, such statements are admissible in evidence for prosecution, as held by the Apex Court in K.I. PAVUNNY Vs. ASSISTANT COLLECTOR (HQ), CENTRAL EXCISE COLLECTORATE reported in 1997 SCC (Cri.) 444.

13.3.4. In K.I.PAVUNNY's case, the Apex Court further held that the customs officer is not a police officer nor he is empowered to file a charge sheet under Section 173, Cr.P.C., though he conducts an enquiry akin to an investigation under some of the provisions of the Code and his acts are in the nature of civil proceedings for collecting evidence to take further action for adjudication of the infringement of the Customs Act, a statute in pari materia to the FERA, 1973.

13.3.5. It is true, the Apex Court in ASSISTANT COLLECTOR OF CENTRAL EXCISE, RAJAMUNDRY Vs. DUNCAN AGRO INDUSTRIES LTD. reported in 2000 Crl.L.J. 4035, held that the inculpatory statement made by any person under Section 108 of the Customs Act is to non-police personnel and hence it has no tinge of inadmissibility in evidence if it was made when the person concerned was not then in police custody. Nonetheless the caution contained in law is that such a statement should be scrutinised by the Court in the same manner as confession made by an accused person to any non-police personnel. The Court has to be satisfied in such cases, that any inculpatory statement made by an accused person to a Gazetted Officer must also pass the tests prescribed in Section 24 of the Indian Evidence Act. If such a statement is impaired by any of the vitiating premises enumerated in Section 24 of the Indian Evidence Act that statement becomes useless in any criminal proceedings. Therefore, it has to be scrutinised with reference to the retracted statements.

13.3.6. The statement of the accused, therefore, cannot, by itself, form a sole basis for conviction, particularly when the respondents/ accused pleaded that the confessional statement relied upon by the prosecution in respective cases (Exs.P4, P8 and P9 in Crl.A.Nos.23, 3 1, 32, and 33 of 1995 and Exs.P5, P7, P8, and P9 in Crl.A.No.148 of 1 995) were retracted by the respondents/accused.

13.3.7. In a criminal trial, the Court is required to marshal evidence. The evidence may consist of direct evidence, confession or substantial evidence. But, for the offence punishable under the provisions of FERA, the well settled legal position is that confession could be the sole basis for conviction. But, if it is retracted, it has to be tested whether the confession is voluntary and truthful inculpating the accused in the commission of crime. Confession is one of the species of admission dealt with under Sections 24 to 30 of the Indian Evidence Act and Section 164, Cr.P.C. It is an admission against the maker of it, unless its admissibility is excluded by some of those provisions. But, when it is retracted by the accused, the burden is on the accused to prove that the statement was obtained by threat, duress and promise.

13.3.8. A full bench of the Apex Court in MUTHUSWAMI Vs. STATE OF MADRAS reported in AIR 1954 SC 4, held that no hard and fast rule can be laid down regarding the necessity of corroboration in the case of a retracted confession in order to base a conviction thereon. But apart from the general

rule of prudence where the circumstances of a particular case cast a suspicion on the genuineness of the confession, it would be sufficient to require corroboration of the retracted confession, as it is well settled law that the confession should not be accepted merely because it contains the wealth of detail which could have been invented and unless the main features of the story are shown to be true, it is unsafe to regard mere wealth of uncorroborated detail as a safeguard of truth.

13.3.9. In view of the above decisions, viz. ASSISTANT COLLECTOR OF CENTRAL EXCISE, RAJAMUNDRY Vs. DUNCAN AGRO INDUSTRIES LTD. reported in 2000 Crl.L.J. 4035, and MUTHUSWAMI Vs. STATE OF MADRAS reported in AIR 1954 SC 4, the Court is required to examine whether the confession statement of the respondents/accused in respective cases (Exs.P4, P8 and P9 in Crl.A.Nos.23, 31, 32, and 33 of 1995 and Exs.P5, P7, P8, and P9 in Crl.A.No.148 of 1995) are voluntary; or they were obtained by threat, force, coercion or ill-treatment, as contended by the learned counsel for the respondents/accused in the respective cases.

13.3.10. The learned counsel for the respondents/ accused, in this regard, invited my attention to the following letter of retractions.
(i) Ex.D1, letter of retraction and Ex.P11, telegram by the respondent/accused Crl.A.Nos.23, 31, 32 and 33 of 1995 in retracting the confessional statements;
(ii) the averments made in Crl.M.P.No.984 of 1985 filed by respondent/accused in Crl.A.Nos.23, 31, 32 and 33 of 1995 before the learned Additional Metropolitan Magistrate, (E.O.I), Madras, in C.C.Nos.673, 6 76, 674 and 675 of 1991, to the effect that the statements were obtained by the appellant/complainant, by exercising force and threat and therefore, they were not made voluntarily;
(iii) Exs.P19 and P21, letters of retraction by the respondents/ accused in Crl.A.No.148 of 1995, retracting their confessional statements; and
(iv) the averments made in Crl.M.P.No.733 of 1991 filed by first accused-Krishnasamy and Crl.M.P.No.734 of 1991. filed by respondent/ accused in Crl.A.Nos.23, 31, 32 and 33 of 1995 before the learned Additional Chief Metropolitan Magistrate, (E.O.II), Madras, in C.C. No.333 of 1993, to the effect that the statements were obtained by the appellant/complainant, by exercising force and threat and therefore, they were not made voluntarily;

13.3.11. The learned counsel for the respondents/ accused effectively contends that the averments made in the respective bail applications filed by the respondents/ accused themselves would show that they retracted the confessional statements even before the Magistrates concerned, at the earliest point of time.

13.3.12. To buttress their submission that the confessional statement of the respondents/accused were obtained by threat, force and coercion, the learned counsel for the respondents/accused also submits that the respondents/accused were not produced before the Magistrates concerned within twenty four hours from the time of the arrest, which itself would prove that the respondents/accused were subjected to harassment and ill-treatment and therefore, the letter of retraction (Ex.D1) and retraction telegram (Ex.P11)

in Crl.A.Nos.23, 31, 32 and 33 of 1995 and the retraction letters (Exs.P19 and P21) in Crl.A.No.148 of 1995, have to be accepted as there is a suspicion on the very genuineness of the legal custody of the respondents/accused when they were said to have made the confessional statement vide in respective cases (Exs.P4, P8 and P9 in Crl.A.Nos.23, 31, 32, and 33 of 1995 and Exs.P5, P7, P8, and P9 in Crl.A.No.148 of 1995).

13.3.13. There cannot be a prolonged custody or deprival of freedom of life and liberty or property attracting Articles 21 and 22 of the Constitution of India, for a period more than twenty four hours from the time of arrest, either under the guise nquiry, interrogation or investigation whatsoever, as held by a full bench of this Court in ROSHAN BEEVI Vs. JOINT SECRETARY TO THE GOVT. OF TAMIL NADU, PUBLIC DEPT. (LAW AND ORDER) AND OTHERS reported in 1983 TLNJ 422.

13.3.14. A prolonged custody is a question of fact and there cannot be any hard and fast rule to decide such allegations except to get satisfied by the scrutinisation of the relevant records, as ruled out by the Apex Court in MUTHUSWAMI Vs. STATE OF MADRAS reported in AIR 1 9 54 SC 4.

13.3.15. I have perused the original records relating to the remand of the respective cases. From the records relating to the order of remand by the learned Additional Chief Metropolitan Magistrate, (E.O.I), Madras, in Crl.A.Nos.23, 31, 32 and 33 of 1995, I find that the respondent/accused was arrested at 4.00 pm on 9.11.1985 and was produced at 2.05 p.m. on 10.11.1985 at the residence of the learned Magistrate. Similarly, the respondents/accused in Crl.A.No.148 of 19 95 were arrested at and produced before the learned Additional Chief Metropolitan Magistrate, (E.O.II), Madras, at 3.30 pm on 10.7.1991, for remand. Therefore, the contention that the respondents/accused in the respective cases were kept under prolonged custody is found to be incorrect.

13.3.16. The next point that arises for my consideration in this regard is as to whether the respondents/accused were subjected to any threat, force, coercion or ill-treatment, while giving their respective confessional statement, as complained in their respective bail applications?

13.3.17. I have perused the records relating to the bail application, viz., Crl.M.P.No.984 of 1985 filed by accused-Khader Sulaiman on 11 .11.1985 before the learned Additional Metropolitan Magistrate, (E.O.I), Madras, in C.C.Nos.673, 676, 674 and 675 of 1991. Even though in the said bail application, the respondent/accused stated that the statement obtained was not voluntary, but the same was obtained by force and coercion, I find that the learned Magistrate, while remanding the accused-Khader Sulaiman, recorded that there was no complaint of ill-treatment.

13.3.18. Similarly, I have perused the records relating to the bail applications, viz., Crl.M.P.No.733 of 1991 filed by first accusedKrishnasamy and Crl.M.P.No.734 of 1991 filed by the second accusedSampath Kumar, before the learned Additional Chief Metropolitan Magistrate, (E.O.II), Madras, in

C.C.No.333 of 1993. The said bail applications were filed on 10.7.1991. Of course, the first accusedKrishnasamy averred that the statement was obtained from him by force and threat and the second accused-Sampath Kumar averred that the Enforcement Officers had extracted the statement from him, and the same were not binding on him. However, when the accused were produced at 3.30 p.m. on 1 0.7.1991 for remand, the learned Additional Metropolitan Magistrate (E.O.II), Madras, remanded them till 24.7.1991, after recording that no complaints of ill-treatment by the Officers of Enforcement Wing.

13.3.19. The respondents/accused, when they were produced before the Magistrates concerned, at the very earliest point of time, viz. immediately after the statements were said to have obtained by threat, force, coercion or ill-treatment, had not expressed grievance of any such threat, force, coercion or ill-treatment to the Magistrates concerned, and as a result, the Magistrates concerned recorded that the respondents/accused had not complained any ill-treatment. Hence, it may not be proper for this Court to doubt that the respondents/ accused were not subjected to any ill-treatment. The averments stated in the bail applications of the respective respondents/ accused that the statements were obtained from them by force, threat, coercion or illtreatment does not merit my consideration and hence, the grievance of the respondents/ accused in this regard, is liable to be rejected as untrustworthy.

13.3.20. As a result, I am obliged to reject the retraction statements (Ex.D1) and retraction telegram (Ex.P11) in Crl.A.Nos.23, 31, 32 and 33 of 1995 and the retraction letters (Exs.P19 and P21) in Crl.A. No.148 of 1995, and proceed to scrutinize the confession statements in respective cases (Exs.P4, P8 and P9 in Crl.A.Nos.23, 31, 32, and 3 3 of 1995 and Exs.P5, P7, P8, and P9 in Crl.A.No.148 of 1995), as the same are admissible in law.

13.4.1. In the instant case, confessional statement relied upon by the prosecution, viz. in respective cases (Exs.P4, P8 and P9 in Crl. A.Nos.23, 31, 32, and 33 of 1995 and Exs.P5, P7, P8, and P9 in Crl.A. No.148 of 1995). made before the enforcement officers, who are not police officers within the meaning of Section 24 of the Evidence Act, corroborates with the evidence of the investigating officer and more so, with that of the co-accused and the partner in C.C.No.333 of 1993 .

13.4.2. The materials seized under the respective mahazar and the statement of the accused corroborate with the confessional statement of the respondents/accused and that of the evidence of the Investigating Officers, viz. PW1 in Crl.A.Nos.23, 31, 32 and 33 of 19 95 and PWs 1 to 3 in Crl.A.No.148 of 1995. Therefore, non examination of the recipients or the person who paid the amount to the respondents/ accused on behalf of Haja Mohideen and Srinivasagam in the respective cases, in my considered opinion, is not fatal to the case of the prosecution, as the confessional statement of the respondents/ accused made before the enquiry officer during the investigation, enquiry and thereafter during the adjudication proceedings substantially corroborate with the supporting material evidence referred to above.

13.5.1. For a better appreciation of evidence, I am inclined to reappreciate the evidence relied upon by the prosecution, particularly the confessional statements in respective cases (Exs.P4, P8 and P9 in Crl.A.Nos.23, 31, 32, and 33 of 1995 and Exs.P5, P7, P8, and P9 in Crl.A.No.148 of 1995).

13.5.2. As already referred to above, in the earliest statement P4, Khader Sulaiman confessted that he used to receive letters from S.K.Haja Mohideen, a person resident outside India, viz. UAE, who was arranging funds to his friends and relatives in India, in May 1985, requiring Khader Sulaiman to disburse the funds to persons in India ad directed by S.K.Haja Mohideen for a commission of Rs.300/- for every Rs.1,00,000/- as per the code words viz., "COLD FINGER" which denotes as follows:

C
O
L
D
F
I
N
G
E
R
1
2
3
4
5
6
7
8
9
0

viz., C=1, O=2, L=3, D=4, F=5, I=6, N=7, G=8, E=9 and R=0.
It was explained that, if the accused-Khader Sulaiman was required to pay an amount of "CR" to a person as directed by S.K.Haja Mohideen, it would mean that Khader Sulaiman should add three zeros to "CR", i.e., C=1, R=0 + 3 Zeros, which would denote Rs.10,000/-. It was stated in Ex.P4, that Khader Sulaiman received Rs.1,03,000/- in May 1 985 and again Rs.1,17,000/- in August 1985, from unknown persons, at the instance of S.K.Haja Mohideen, for which the accused-Khader Sulaiman was charged for the offence punishable under Section 9(1)(b) r/w 56(1)(1) of the FERA, in C.C.No.674 of 1991 on two counts.

13.5.3. Khader Sulaiman also stated in Ex.P4 that he received a sum of Rs.96,500/- and Rs.67,000/- in July 1985 and Rs.50,000/- in October 1985, from unknown persons at the instance of S.K.Haja Mohideen, for which Khader Sulaiman was charged under Section 9(1)(b) r/w 56(1)(ii) of the FERA in C.C.No.675 of 1991 on three counts.

13.5.4. In Ex.P4, Khader Sulaiman further stated that he delivered Rs.1,02,700/- in the month of May 1985 and Rs.2,79,600/- in the months of July

1985 to September 1985, after deducting his commission of Rs.300/- and Rs.900/- respectively, to various persons in India as directed by S.K.Haja Mohideen and therefore, Khader Sulaiman was charged for the offence punishable under Section 9(1)(d) r/w 56(1)(i) of the FERA, in C.C.No.673 of 1991 on two counts.

13.5.5. That apart, Khader Sulaiman stated in Ex.P4 that he paid Rs.20,000/- to an unknown person in India, as directed by S.K.Haja Mohideen, in October 1985, for which he was charged for the offence punishable under Section 9(1)(d) r/w 56(1)(ii) of the FERA, in C.C. No.676 of 1991 for payment of Rs.20,000/- in November 1985.

13.5.6. As per the statement of Khader Sulaiman (Ex.P4), Khader Sulaiman used to disburse the said amounts to the persons as directed by S.K.Haja Mohideen, by demand drafts in the name of Khader Sulaiman or Khader, even though there is no such person by the name Khader. The said demand drafts were drawn on:
(i) Indian Bank, Esplanade Branch;
(ii) Indian Overseas Bank, Esplanade Branch;
(iii) Andhra Bank, Sowcarpet;
(iv) Canara Bank, Audiappa Street;
(v) United Commercial Bank, Mount Road;
(vi) Vijaya Bank, II Line Beach;
(vii) Bank of India, Armenian Street; and
(viii) State Bank of India, Govindappa Street.

The details of the names and addresses of persons furnished by S.K. Haja Mohideen would be destroyed after the disbursement of the funds.

13.5.7. The explanation offered by Khader Sulaiman in Ex.P4 with reference to the incriminating documents, viz. Ex.P3 series (7 sheets seized on 9.11.1998) also deserves to be examined.
Three sheets out of seven sheets, contain the names and addresses of the persons, furnished by S.K.Haja Mohideen, to whom the funds were to be disbursed as per the code mentioned against the respective name. The first sheet contains the names and addresses of six persons with a number '45'; the second sheet contains the names and addresses of six persons with a number '52'; and the third sheet contains names and addresses of five persons with a number '57'. The total of 45+52 +57 works out to 154, which would mean Rs.1,54,000/-. The total amount mentioned by way of code in all the said three sheets works out to Rs.1,24,000/-, which were said to have been disbursed by Khader Sulaiman, keeping a balance of Rs.30,000/-, which was seized at the time of search on 9.11.1985. Sheets 4 and 5 are the letter and envelope received from S.K.Haja Mohideen. Khader Sulaiman further stated that S.K.Haja Mohideen wrote that he would be sending a sum of Rs.10,000/- to Khader Sulaiman through an unknown person in India and required Khader Sulaiman to deliver the same to the sister of S.K.Haja Mohideen at Keezhakarai. Since the said Rs.10,000/- was not delivered to Khader Sulaiman, S.K.Haja Mohideen, replied by a letter dated 20.10.1 985 that he had directly sent the amount to his sister, letter and envelope, are marked as sheets 4 and 5 in Ex.P3 series. The sixth sheet was a letter dated 7.8.1985, addressed to

LKM Hussain, the brother of Khader Sulaiman. It was stated that the contents of the said letter could be interpreted only by his brother. Number '20' mentioned in the seventh sheet, as per the statement of Khader Sulaiman represents Rs.2,000/- out of which he had paid Rs.503/- towards telephone bill and Rs.250/- towards rent, in the year 1981.

13.5.8. Again, in the statement Ex.P8, Khader Sulaiman, confirmed that the contents in the earlier statements were true to the effect that he sent a sum of Rs.20,000/- to a party at Bangalore, by way of demand draft drawn on United Commercial Bank, Chennai 600 002, in the name of Khader.

13.5.9. A reference to Ex.P9 dated 24.2.1986 is also relevant. In the said statement, the accused had stated that he received a total sum of Rs.4,33,500/- during the period May to October 1985 from unknown persons in India and disbursed a sum of Rs.4,02,300/- to various persons in India as per the instruction of S.K.Haja Mohideen, and was having a balance of Rs.30,000/- which was seized from him on 9.11.198 5 . To substantiate the prosecution case that Khader Sulaiman was dealing in foreign exchange, a statement was also obtained from one Saroja, wife of T.S. Balasubramanian, dated 4.3.1986, was marked as Ex.P10 wherein she had stated that her husband was working in DSA Ruwi Sultanate of Oman for the past three years and returned to India on 6 .2.1 986 as he was dismissed from service on 5.2.1986 and that her husband himself would state with respect to the payment which she used to receive from her husband through a third party.

13.6.1. Similarly, in C.C.No.333 of 1993, three searches were conducted.

13.6.2. PW1, investigating officer, during his search in the business premises of Raja Traders at No.58, Thana Street, Purasawalkam, Madras 600 007, on 9.7.1991 and seized certain incriminating documents, viz. telephone file containing telephone bills and other documents containing 28 pages (Ex.P3 series) and a diary containing 38 pages (Ex.P4), under a mahazar report dated 9.7.1991 (Ex.P2) and obtained a statement from Krishnasamy (Ex.P5) at the time of search on 9.7.1991 and statement of one Perumal (Ex.P10), partner of Raja Traders, Madras, was recorded on 16.7.1991.

13.6.3. P.W.2 conducted a search on 10.7.1991, in the place of SRK Bankers (Office cum house) at No.12B, Shastri Road, Thillai Nagar, Trichy, in the presence of two independent witnesses and one Muthuraman, Managing Partner of SRK Bankers and seized some incriminating documents, viz., five sheets and Rs.40,000/- under mahazar report (Ex.P11) and two incriminating documents were seized from Muthuraman and they were marked as Ex.P12 series and the statement of Muthuraman (Ex.P1 3) was obtained during the search on 10.7.1991.

13.6.4. Another search was conducted by P.W.3, in the house of Krishnasamy at No.6, Diwan Bahadur Shanmugam Salai, Chennai- 600010 on 9.7 .1991 and some documents, 100 US$ as travellers cheque and 24 US$ (12

in number, marked as Ex.P16 series) were seized, under mahazar report (Ex.P15) and on the same day, viz., 9.7.1991, the second accused Sampath Kumar appeared before P.W.3 and gave a statement marked as Ex. P17 and another statement of

Sampath Kumar (Ex.P9) was obtained on 29 .7.1991.

13.6.5. In Ex.P5, the first accused Krishnasamy stated that Srinivasagam of Colombo, when he came to Chennai, contacted him in January 19 91, and asked him to assist in money transactions on commission basis. According to their arrangement, Srinivasagam would be sending money to first accused-Krishnasamy through the second accusedSampath Kumar, and the same had to be given to one Basheer. That apart, he would also send money through some other persons and the same had to be delivered to various persons for a commission of Rs.400/- for disbursement of every Rs.1,00,000/-. During January to May 1991, he received Rs.80,00,000/- through the second accused-Sampath Kumar and others and the same was delivered to Basheer. In June 1991, as per the information given by Srinivasagam, he received Rs.27,86,000/- and the same was given to Basheer immediately. The first accused- Krishnasamy also explained about the documents seized from his residence on 9.7.1 99 1. He stated that telephone bills and receipts seized on 9.7.1991 are related to: (a) the telephone bills of telephone No.661577 installed at the shop owned by him; (b) papers relating to the application for telephone connection at his residence and also at his cousin sister's house; (c) papers containing telephone numbers of Srinivasakam of Colombo; (d) telephone number of second accused-Sampath Kumar; and (e) address book containing the addresses of Roshan, Murugesh of Mayura Textiles and Murugesan Pillai and the addresses and telephone numbers of relatives and friends.

13.6.6. Thereafter, Krishnasamy appeared before PW1 on 10.7.1991, in response to the summon marked as Ex.P6 and again gave a statement dated 10.7.1991 (Ex.P7), in his own handwriting.

13.6.7. The first accused-Krishnasamy, in his statement marked as Ex.P7, stated that the contents in Ex.P5 and the statement of Sampath Kumar given on 9.7.1991 that he gave Rs.37,40,000/- to him, as per the instruction of Srivasagam, were true. He further stated that he had disbursed most of the money to Basheer and some to Roshan, Murugesh of Mayura Textiles and Murugesh of Nathan Avenue, Harrington Road. He had no reference for the amount he received and disbursed from January to June 1991. He would write in small slips and thereafter, would destroy them and therefore, was not in a position to give details about the disbursement of the amount and the persons relating to the receipts and disbursement of the funds. He received Rs.27,86,000/- in the month of June, 1991 and disbursed the same leaving a balance of Rs.4,73,500/- and that he delivered the balance amount and Rs.6,00,0 00 /- given by Sampath Kumar, i.e. upto 8.7.1991, in July 1991. He received Rs.1,40,000/- from Sampath Kumar on 8.7.1991 and the same was delivered to Basheer on 9.7.1991 and he had not written anything about this transaction. He is not aware of the address of Basheer. He confirmed that what all he had stated were true.

13.6.8. The first accused-Krishnasamy, in another statement Ex.P8 dated 10.7.1991, which was made after identifying one Roshan of Madras, clarified his statement given on 9.7.1991 (Ex.P5) that he delivered Rs.20,000/- to one Roshan. The statement of one Perumal, partner of Raja Traders, Madras, was recorded on 16.7.1991, and the same was marked as Ex.P10.

13.6.9. M.Perumal, partner of Raja Traders in Ex.P10 stated that on 9.7.1991, the Enforcement Officers searched their provision shop by name Srira Traders and seized file for the telephone number 161577 in his presence and in the presence of Krishnasamy and Sampath Kumar. Sampath Kumar belonged to Trichy. Sampath Kumar brought Rs.1,40,000/- on 8.7.1991, and the same was received by Basheer on 9.7.1991. He knew Sampath Kumar and Muthuraman of SRK Bankers, Trichy. Sampath Kumar would bring money and give to Krishnasamy, which would be disbursed by Krishnasamy, as per the instructions given by Srinivasagam, over a period of six or seven months. He did not know where Basheer was residing, but he had seen him coming in the motor cycle. He identified the photo of Basheer. He stated that all the statements given by him were true.

13.6.10. The second accused Sampath Kumar, appeared before PW1 on 29

.7.1991, and gave a statement (Ex.P9), in his own handwriting.

13.6.11. The second accused-Sampath Kumar, in his statement marked as Ex.P9 dated 9.7.1991, stated that he was a partner of SRK Bankers and his brother Bhuvanasekar, sister Kokila, sister's husband Srinivasagam of Colombo, their two sons Ramesgar and Rathisgar and one Rajaram were also partners of SRK Bankers and S.M. Muthuraman was the Managing Partner. The second accused-Sampath Kumar in Ex.P9 also stated that he disbursed the amount to persons in India as instructed by Srinivasagam. Mostly, he would keep the money received by him and disburse the same to the persons who would bring small slip containing the signature of Srinivasagam mentioning the amount to be delivered; and in his absence, Muthuraman would disburse the amount. "33,200.00" mentioned in the first sheet seized represented Rs.33,20,000/- received by him as instructed by Srinivasagam; he disbursed Rs.24,33,448/- as per the instructions of Srinivasagam. Similarly, "21,740.60" mentioned in the second sheet represented Rs.21,74,060/- received by him as instructed by Srinivasagam; and he disbursed Rs.23,49,460/- to one Raju, Sundar Nagar, Trichy, on 6.7.1991, as directed by Srinivasagam. As per the said two sheets, he had received Rs.54,94,060/- and disbursed Rs.52,82,948/- from January 1991, as per the instructions of Srinivasagam. The addresses of the persons to whom the amounts were delivered were not known. He confirmed the statement made on 9.7.199 1 that Basheer gave him a sum of Rs.60,00,000/- in Trichy as per the instructions of Srinivasagam and disbursed Rs.59,60,000/- and the balance of Rs.40,000/- was given to Muthuraman. He also identified the photo of Basheer and stated that Basheer came and collected Rs.1,40,000/- on 9.7.1991, which was to be handed over to Krishnasamy at his shop - Raja Traders. He also stated that except the lodging and conveyance expenses, he did not receive any commission for the above money transactions and he only assisted his brother-in-law - Srinivasagam in the above transactions.

13.6.12. The statement of the co-accused can be used as a substantive evidence connecting with the petitioner with contravention of illegal export of foreign exchange, as held by the Apex Court in MORARJI GOCULDAS B&w CO. LTD. Vs. UNION OF INDIA reported in 1996 (83) ELT 25 8 .

13.6.13. As per Section 72 of the FERA, 1973, where any document is

produced or furnished by any person or has been seized from the custody or control of any person and such document is tendered in any proceedings under the FERA, 1973, the Court shall presume the signature and every other part of the document was executed or attested by the person by whom it purports to have been so executed or attested, unless the contrary is proved. Therefore, the presumption of correctness of the documents recovered and seized from the custody or control of the person accused is also against the accused and heavy onus lies on the accused to prove the contrary.

13.6.14. As long as the appellant/enforcement officers are empowered to search and seize the material evidence from the respondents/ accused, by exercising the powers conferred under Sections 37 and 38 of the FERA and the same has been duly exercised by the appellant, the material evidence which were seized from the custody of the respondents/accused are deemed to be of the respondents/accused, presuming unless the contrary is proved that the signature and other part of such document that of a person's writing and that it was executed and attested by the persons by whom it purports to have been so executed or attested.

13.6.15. As rightly pointed out by the learned counsel for the appellant/complainant, non examination of persons either paid money to the accused or received the same from the accused or the bankers through whom the amounts were disbursed in the respective cases, in my considered opinion, is not fatal to the case of the prosecution, as there is no no need to call the panch witnesses in view of the contention made by the respondents/accused before the enforcement officers, as per the decision of the Apex Court in SURJEET SINGH CHHABRA v. UNION OF INDIA & ORS. reported in JT 1996 (10) SC 239, wherein it is held as follows.

" It is true that the petitioner had confessed that he purchased the gold and had brought it. He admitted that he purchased the gold and converted it as a Kara. In this situation, bringing the gold without permission of the authority is in contravention of the Customs Duty Act and also FERA. When the petitioner seeks for crossexamination of the witnesses who have said that the recovery was made from the petitioner, necessarily an opportunity requires to be given for the cross-examination of the witnesses as regards the place at which recovery was made. Since the dispute concerns the confiscation of the jewellery, whether at conveyor belt or at the green channel, perhaps the witnesses were required to be called. But in view of confession made by him, it binds him and, therefore, in the facts and circumstances of this case the failure to give him the opportunity to crossexamine the witnesses is not violative of principle of natural justice. It is contended that the petitioner had retracted within six days from the confession. Therefore, he is entitled to cross-examine the panch witnesses before the authority takes a decision on proof of the offence. We find no force in this contention. The Customs officials are not police officers. The confession, though retracted, is an admission and binds the petitioner. So there is no need to call panch witnesses for examination and cross-examination by the petitioner."

The above view is also supported by a decision of this Court in A. MALLICK Vs. STATE BY ASST. DIRECTOR OF ENFORCEMENT (FERA), SHASTRI BHAVAN, MADRAS

(CRL.R.C.No.128/93 DT. 20.4.1998).

13.6.16. On the contrary, as rightly pointed out by the learned counsel for the appellant, there is no proper explanation from the respondents/accused for having used the code for the receipt and disbursement of the amounts in question. If the amounts were received and disbursed of in the course of normal transactions which are not in violation of any law, argued that there would not be any necessity for any secretive description or codes being used for disbursement of the amounts, which were explained in the statement of the respective accused and also corroborates with the documentary evidence. Hence, the accused-Khader Sulaiman, having failed to discharge his burden as contemplated under Sections 56 and 71 of the FERA, 1973, is held to be guilty of the charges framed against him.

13.6.17. Hence, the materials and the documentary evidence and the recovery of currencies, both Indian Rupees and US Dollars are supporting the case of the prosecution, as deposed by the investigating officer. It is, therefore, clear that the material, oral and documentary evidence relied upon by the prosecution in the respective criminal cases substantially prove the charges framed against the respondents/ accused, as the respondents/accused miserably failed to discharge the burden cast upon them under Sections 56 and 71 of the FERA, 1973. Hence, both the respondents/accused are held to be guilty of the charges framed against them.

13.6.18. Question No.(ii) is answered accordingly.

14.1. Question No.(iii): Are the respondents/accused not entitled for the benefit of the FEMA, 1999, whereunder no provision is made for punishment, assuming that the respondents/accused are liable to be convicted for the offences punishable under Sections 9(1)(b) and 9(1)(d) of the FERA, 1973 in the respective criminal cases, and could they be punished for the said offences under the FERA, 1973, which stands repealed by the enactment of the FEMA?

14.2. This is rather a very interesting question. Section 56 of the FERA,1973 renders an offence relating to the contravention of the provisions of FERA, 1973 prosecutable and punishable. Therefore, a contravention of the provisions of the FERA, 1973 as mentioned under Section 56 of the FERA, 1973 is an offence and the person who commits such offence can be prosecuted by competent Court and be punished as prescribed therein.

14.3. Concedingly, the FERA, 1973 was repealed and replaced by FEMA, 1999 taking into account substantial increase in our foreign exchange reserves, growth in foreign trade, rationalization of tariffs, current account convertibility, liberalization of Indian investments abroad, increased access to external commercial borrowings by Indian corporates and participation of foreign institutional investors in our stock markets. Thus FERA, 1973 stood repealed and FEMA, 1999 came to be enacted with effect from 1.6.2000, with a repealing and saving clause namely Section 49 of the FEMA, 1999, which reads as follows:

Section: 49 - Repeal and saving:
(1)The Foreign Exchange Regulation Act, 1973 (46 of 1973) is hereby repealed and the Appellate Board constituted under sub-section (1) of Section 52 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved.
(2)On the dissolution of the said Appellate Board, the person appointed as Chairman of the Appellate Board and every other person appointed as Member and holding office as such immediately before such date shall vacate their respective offices and no such Chairman or other person shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service.
(3)Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act and no adjudicating officer shall take notice of any contravention under Section 51 of the repealed Act after the expiry of a period of two years from the date of commencement of this Act.
(4)Subject to the provisions of sub-section (3) all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not been repealed.
(5)Notwithstanding such repeal,-
(a)anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorization or exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;
(b)any appeal preferred to the Appellate Board under sub-section (2) of Section 52 of the repealed Act but not disposed of before the commencement of this Act shall stand transferred to and shall be disposed of by the Appellate Tribunal constituted under this Act;
(c)every appeal from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of Section 52 of the repealed Act shall, if not filed before the commencement of this Act, be filed before the High Court within a period of sixty days of such commencement.

Provided that the High Court may entertain such appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period.

(6)Save as otherwise provided in sub-section (3), the mention of particular matters in sub-sections (2), (4) and (5)shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal.

(emphasis supplied)
14.4. Admittedly, there is no provision prescribing any punishment for any violation of the provisions of the FEMA, 1999 similar to Section 56 of the FERA, 1973.

14.5. Section 49(3) of the FEMA,1999 prescribes a statutory limitation that no Court shall take cognizance of an offence under the repealed Act, namely

the FERA, 1973 and no adjudication officer shall take notice of any contravention under Section 51 of the repealed Act, after the expiry of a period of two years from the date of the commencement of the Act.

14.6. As per Section 49(4) of the FEMA, 1999, all offences committed under the repealed Act shall be governed by the provisions of the repealed Act as if that Act had not been repealed. Therefore, no doubt, the present appeals have to be disposed of, holding that the offences committed by the respondents/accused, which are the subject matter in the above appeals, shall continue to be governed by the provisions of the repealed Act, FERA, 1973.

14.7. Mr.K.Kumar, learned counsel for the appellant, therefore, strenuously contends that the offence said to have been committed by the respondents/accused under the FERA, 1973, for which the respondents/ accused are convicted, should be dealt with only under the provisions of the repealed Act, FERA, 1973, even though there is no provision for punishment in the replaced enactment, FEMA, 1999.

14.8. The sheet anchor of the argument of the learned counsel for the respondents/accused is that when the repeal of a statute is followed by a fresh legislation on the same subject, the Court would undoubtedly have to look to the provisions of the new Act, unless a different intention appears in the new legislation.

14.9. Argued on behalf of the respondents/accused that, just as a person accused of the commission of an offence has no right to trial by a particular Court or to a particular procedure, the prosecutor equally has no right to insist upon that the accused be subjected to an enhanced punishment under the repealed Act, based on the decision in RE HALE'S PATENT reported in (1920) 2 Ch 377.

14.10. The above dictum, in my considered opinion, is applicable only when a later statute again describes an offence created by an earlier statute and imposes a different punishment, or varies the procedure, the earlier statute is repealed by implication. The said rule is subject to the limitation that a greater punishment has no application where the offence described in the later Act is not the same as in the earlier Act, i.e., when the essential ingredients of the two offences are different. The position is not the same in the instant case. Therefore, the dictum in RE HALE'S PATENT reported in (1920) 2 Ch 37 7 is not applicable to the facts on hand.

14.11. Of course, when a question came for consideration whether the Appellate Court can extend the benefit of Probation of Offenders Act, 1958 which had come into force after the accused had been convicted in a criminal offence, before the Apex Court in RATTAN LAL Vs. STATE OF PUNJAB reported in AIR 1965 SC 444, the Court by a majority 2:1 answered in the affirmative. Subba Rao,J. who delivered the majority opinion, held that while considering the question, the rule of beneficial construction required that even expost facto law of the type involved in that should be applied to reduce the

punishment. The ruling of the majority laid down in RATTAN LAL case, referred supra, is based on the well settled authority on principle that when a later statute again describes an offence created by an earlier statute and imposes a different punishment, or varies the procedure, the earlier statute is repealed by implication.

14.12. It is apposite to refer the following observation in Michell Vs. Brown reported in (1858) 120 ER 909:

"It is well settled rule of construction that, if a later statute again describes an offence created by a former statute and affixes a different punishment, varying the procedure, the earlier statue is repealed by the later statute".

The above ratio is also supported by the decision in SMITH Vs. BENABO reported in (1937) 1 All ER 523.

14.13. Indeed, in REGINA Vs. YOULE reported in (1861) 158 ER 311, it is held that:

"If a statue deals with a particular class of offences, and a subsequent Act is passed which deals with precisely the same offences, and a different punishment is imposed by the later Act, I think that, in effect, the legislature has declared that the new Act shall be substituted for the earlier Act."

14.14. In one another occasion, when Terrorist and Disruptive Activities (Prevention) Act, 1985 was repealed and replaced by Terrorist and Disruptive Activities (Prevention) Act, 1987, prescribing lesser sentence under the Terrorist and Disruptive Activities (Prevention) Act, 1987 for same offence that was punishable under the Terrorist and Disruptive Activities (Prevention) Act, 1985, the scope and overriding affect of the saving clause provided under the Terrorist and Disruptive Activities (Prevention) Act, 1987 came for consideration before the Apex Court in STATE Vs. GIAN SIGH reported in 1999 SCC (Cri) 1512 , and the Apex Court thereupon held as follows:

"? if any subsequent legislation would downgrade the harshness of the sentence for the same offence, it would be a salutary principle for administration of criminal justice to suggest that the said legislative benevolence can be extended to the accused who awaits judicial verdict regarding sentence."
(emphasis supplied)
14.15. In the instant case, the new enactment is provided with a repeal and saving clause, namely Sections 49(3) and 49(4) of the FEMA, 1 999, referred to above. That apart, Section 49(6) of the FEMA, 1999 specifically provides for the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of the repeal, except as otherwise provided under sub-sections 2, 3, 4 and 5 of Section 49 of the FEMA, 1999. On the other hand, the Apex Court, time and again, cautions that a murder may be committed in a heat of moment upon passions being aroused, but, an economic offence is committed with cool calculation and deliberate design with an eye

on personal profit regardless of the consequence to the Community and therefore, white collar economic offences are to be viewed seriously as they cause greater damage to the national economy and national interest. Hence, the contention raised by the learned counsel for the respondents/accused that in view of the repeal of the FERA, 1973 and the enactment of FEMA, 1999, the respondents, even if convicted, cannot be punished, as there is no provision under the new enactment, FEMA, 1 999, is, in my view, inherently illogical.

14.16. Question No.(iii) is answered accordingly.

15. For the reasons stated above, I am inclined to pass the following order:
i.allow the appeal in Crl.A.No.31 of 1995, set aside the judgment of acquittal of the learned Additional Chief Metropolitan Magistrate, Economic Offences I, Madras dated 7.4.1994 made in C.C.No.676 of 1991 , remit the matter to the learned Additional Chief Metropolitan Magistrate, Economic Offences I, Madras, and direct a new trial to be had upon a charge framed in whatever manner he thinks fit, and complete the trial expeditiously and pronounce the judgment within six months from the date of receipt of copy of this order;
ii.the respondent/accused in Crl.A.No.23 of 1995 is found guilty for the offence punishable under Section 9(1)(d) r/w 56(1)(i) of the FERA, 1973 (two counts);
iii.the respondent/accused in Crl.A.No.32 of 1995 is found guilty for the offence punishable under Section 9(1)(b) r/w 56(1)(i) of the FERA, 1973 (two counts);
iv.the respondent/accused in Crl.A.No.33 of 1995 is found guilty for the offence punishable under Section 9(1)(b) r/w 56(1)(ii) of the FERA, 1973 (three counts); and
v.the respondents/accused in Crl.A.No.148 of 1995 are found guilty for the offences punishable under Sections 9(1)(b) r/w 56(1)(i) of the FERA, 1973 (one count each) and Sections 9(1)(d) r/w 56(1)(i) Of the FERA, 1973 (one count each).

16. However, before imposing punishment, the respondents/accused are directed to appear before this Court on 3.2.2003 to question them on the sentence to be imposed. Accordingly, the matter is adjourned to 3.2.2003 for questioning the accused with respect to the punishment to be imposed.

9.1.2003.

1. The respondents/accused appeared on 3.2.2003 and pray for lesser punishment on the following grounds:

(1) Kader Sulaiman - Accused in C.A.Nos.23, 31, 32 and 33 of 1995 submits that:
a) he is 53 years old;
b) he is suffering from Tuberculosis;
c) he had not involved in any crime, directly or indirectly, much less in an offence contravening any of the provisions of law; and
d) he is the sole bread winner of the family which consists of wife, two sons and a daughter.

(2) Krishnasamy - First accused in C.A.No.148 of 1995 submits that:
a) he is 63 years old;
b) he is not keeping good health. He has hypertension, blood pressure and is also a diabetic patient;
c) since the date of occurrence eleven and half years have lapsed and he had not indulged in any prejudicial activity nor any case was instituted against him;
d) in any event, he was detained under the COFEPOSA, in which the subject matter in the appeal was considered as a ground case, and had undergone 118 days imprisonment.

(3) J.Sampath Kumar - Second accused in C.A.No.148 of 1995 submits that:
a) he has two minor daughters aged 7 and 2 years respectively;
b) since the date of occurrence eleven and half years have lapsed and he had not indulged in any prejudicial activity nor any case was instituted against him;
c) he is the only person to look after his old parents;
d) his mother Sarada is suffering from Cancer, which is said to be in second stage, and necessary medical reports were enclosed;
e) his father Jayarama Reddiar is suffering from Prostate Cancer and heart ailment, and necessary medical reports were enclosed; and
f) in any event, he was detained under the COFEPOSA, in which the subject matter in the appeal was considered as a ground case, and had undergone 202 days imprisonment.
2. After hearing the respondents/accused in person, the matter is adjourned for orders today (7.2.2003).

3. Taking into consideration the principles adumbrated by the Apex Court, (i) by a majority judgment in RATTAN LAL case, and (ii) by the ratio laid down in GAIN SINGH case, referred supra, giving the benefit of the legislative benevolence to the respondents/accused, and exercising the discretionary powers conferred under Section 56 of the FERA, 1973, to impose a lesser sentence for adequate and special reasons that are put forth by the respondents/accused in the respective criminal cases, this Court, passes the following order:
i.allow the appeal in Crl.A.No.31 of 1995, set aside the judgment of acquittal of the learned Additional Chief Metropolitan Magistrate, Economic Offences I, Madras dated 7.4.1994 made in C.C.No.676 of 1991 , remit the matter to the learned Additional Chief Metropolitan Magistrate, Economic Offences I, Madras, and direct a new trial to be had upon a charge framed in whatever manner he thinks fit, and complete the trial expeditiously and pronounce the judgment within six months from the date of receipt of copy of this order;
ii.the respondent/accused in Crl.A.No.23 of 1995 is found guilty for the offence punishable under Section 9(1)(d) r/w 56(1)(i) of the FERA, 1973 and sentenced till the rise of the Court, and also to pay a fine of Rs.5,000/- for each of two counts;
iii.the respondent/accused in Crl.A.No.32 of 1995 is found guilty for the offence punishable under Section 9(1)(b) r/w 56(1)(i) of the FERA, 1973 and sentenced till the rise of the Court, and also to pay a fine of Rs.5,000/- each for two counts;
iv.the respondent/accused in Crl.A.No.33 of 1995 is found guilty for the

offence punishable under Section 9(1)(b) r/w 56(1)(ii) of the FERA, 1973 and sentenced till the rise of the Court, and also to pay a fine of Rs.5,000/- each for three counts;
v.the respondents/accused in Crl.A.No.148 of 1995 are found guilty for the offences punishable under Sections 9(1)(b) r/w 56(1)(i) of the FERA, 1973 (one count each) and Sections 9(1)(d) r/w 56(1)(i) Of the FERA, 1973 (one count each) and sentenced till the rise of the Court, and also to pay a fine of Rs.10,000/- each for each of the two counts;
vi.the sentence imposed above, in the criminal appeals, shall run concurrently; and
vii.in case, the respondents/accused in the respective cases, fail to comply with the fine imposed above, they shall be liable for rigorous imprisonment for one month in each of the counts.
Accordingly, these criminal appeals are allowed.

07.02.2003
Index : Yes
Internet : Yes

kpl/sasi

To

1. The Additional Chief Metropolitan Magistrate
(E.O.I), Egmore, Madras.

2. The Additional Chief Metropolitan Magistrate
(E.O.II), Egmore, Madras.

3. The Public Prosecutor
High Court, Madras.

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